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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,356	08/21/2001	Dale E. Koop	CTC-401	7685

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EXAMINER

FARAH, AHMED M

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 10/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/934,356

Applicant(s)

Dale E. Koop

Examiner

A. Farah

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:

- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____.
- ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 3, 5, 6 6) ☐ Other:

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "such as" renders the claim indefinite for failing to define the metes and bounds of the invention.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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4. Claims 1-3 and 8-10 are rejected under 35 U.S.C. 102(e) as being anticipated by O'Donnell, Jr. U.S. Patent 6,106,514.

O'Donnell, Jr. discloses apparatus and method for treating subsurface layer of skin, the method comprising the steps of:

applying anti-inflammatory, anti-oxidant (wound healing) pharmaceutical agent to the skin (Col. 3, lines 21-26); and

irradiating the skin with laser energy sufficient to cause stimulation of collagen remodeling for the purpose of effecting the tightening of the skin and reducing wrinkles without significantly altering the epidermis (see claims 1-3).

As to claim 3, O'Donnell, Jr. applies mechanical energy to the skin tissue (Col. 6, lines 6-10).

As to claim 8, his treatment reduces wrinkles. Therefore, since wrinkles result from photodamaged and/or aging skin, he provides the claimed method step.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 4-6 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Donnell, Jr. in view of Purchio et al. U.S. Patent 5,599,788.

Although O'Donnell, Jr., described above, discloses pharmaceutical agent to enhance the treatment, he does not teach the use of growth factor such as H3 protein to promote the healing process. m

However, Purchio et al. disclose a method of producing recombinant transforming growth factor β -induced H3 protein and its use to accelerate wound healing. They further teach that H3 protein may be combined with conventional chemotherapy and radiation treatment to increase the over all treatment efficiency (Col. 4, lines 58-60).

Therefore, it would have been obvious to one skilled in the art at the time of the applicant's invention to modify O'Donnell, Jr. and apply a growth factor such as H3 protein to the skin as taught by Purchio et al. in order to accelerate the wound healing and to enhance the over all treatment efficiency.

As to claim 6 of the instant application, claim 3 of O'Donnell, Jr. teaches the claimed limitation.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tankovich et al. U.S. Patent 5,817,089 in view of Purchio et al. ('788).

Tankovich et al. disclose phototherapy treatment methods for the reduction and removal of unwanted hair and the mitigation of skin conditions such as acne and seborrhea. However,

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they do not apply wound healing promoter composition to the skin to enhance the healing process.

Purchio et al., described above, teach the use of a wound healing protein, which may be combined with conventional chemotherapy and radiation treatment to increase the over all treatment efficiency. Therefore, it would have been obvious to one skilled in the art at the time of the applicant's invention to modify the invention of Tankovich et al. with Purchio et al. to apply a wound healing protein to the skin being treated so as to enhance the wound healing process and improve the over all treatment efficiency.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 5,976,123 to Baumgardner et al. teach improved methods for treating wrinkles including chemical cutaneous peels, dermabrasion, use of topical agents and laser assisted skin resurfacing (Col. 3. Lines 64-67).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to A. Farah whose telephone number is (703) 305-5787. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Linda Dvorak, can be reached on (703) 308-0994. The fax number for the Examiner is (703) 746-3368.

A - Farah
09/27/02
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